

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

And

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.A. NO.384 OF 2006

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Between:

K.Uma Maheswara Rao and another

..... Appellant

AND

The Hyderabad Metropolitan Water Supply & Sewerage Board,

Represented by its Managing Director, Hyderabad.

.....Respondent

::JUDGMENT::

Counsel for the Appellants : Sri M.Ramam

Counsel for Respondent : Smt.M. Venkateswari

Dated 27/4/2006

Per Sri G.S.Singhvi, CJ

Dissatisfied with order dated 23-12-2005 passed by the learned Single Judge whereby he refused to entertain their prayer for issue of a mandamus to the respondent to provide water connection, the appellants have filed this appeal.

The appellants are residents of Rock Town Colony, L.B. Nagar, Hyderabad. They applied to Hyderabad Metropolitan Water Supply and Sewerage Board, Hyderabad (for short 'the Board') for 15 mm. water connection for their residences. Their application is said to have been sanctioned by the competent authority on 12-

5-2005, but water connections were not provided.

The learned Single Judge took notice of the averments contained in the counter-affidavit filed on behalf of the respondent and dismissed the writ petition by observing that the petitioners have to wait till such time their colony fulfils the requirement of paying 30% of the estimated cost of laying pipeline in the colony.

On 13-4-2006, the Division Bench called upon the Director (Finance) of the Board to appear in person along with the relevant rules, regulations, instructions or bye-laws under which a society or its members of residential colony are required to deposit 30% of the cost for laying the pipeline. On the next date of hearing i.e., 17-4-2006, the Court directed Sri G.K. Rao, Director (Finance) of the Board to file his affidavit. In compliance of that order, Sri G.K. Rao has filed affidavit dated 24-4-2006, paragraphs 2 and 3 of which read as under:

“2. I humbly submit that the appellants have preferred the writ petition seeking the order or direction more particularly one in the nature of writ of mandamus declaring the action of the Board in not providing the water connection to the petitioner as illegal and contrary to law. The said writ petition bearing No.25841 of 2005 is dismissed against which the petitioners preferred present writ appeal. In the said writ appeal, the Hon’ble Court directed me to file a comprehensive affidavit along with relevant Rules and Regulations and also the decision, if any, taken in the matter of levy of charges for laying pipeline for the residential colony as also the charges payable by the individual plot holders for providing water connection. As per the directions of this Hon’ble Court, I humbly submit that water supply to domestic consumption is governed by the provisions of Section 23 of HMWSS Act. As per the said Section 23 (1) **“the Public Health Engineer incharge of water supply may, on application by the owner or occupier of any building, arrange, in accordance with the rules and regulations, to supply water thereto for domestic consumption and use.”** As per Section 23 (2), **“it shall not be lawful for the owner of any dwelling house which may be constructed or reconstructed after the coming into force of this Act to demand water supply from the Board unless he has obtained a certificate in the prescribed manner from the Board that there is provided within or within a reasonable distance of the house such supply of wholesome water as appears to the Board to be sufficient for the domestic consumption and use of the inmates of the house.”** Therefore, in the light of provision of the Section, it is clear that all sanctions accorded for water supply connections are subject to the Rules and Regulations thereon. Secondly, the customer cannot demand water supply connection unless he obtains a certificate that water supply lines are located within a reasonable distance from the house.

3. I humbly submit that with regard to the specific rule for giving water supply connection, the same is governed by Rule 9 (3) para-2 in which it is provided that **“in an area where there is a sporadic development, the Board shall arrive at the size of the pipeline required for the entire area and the cost of laying that size of pipeline up to the applicant’s premises as fixed by the Board shall be paid by the applicant.”** In view of the said Rule, the entire cost of laying the required size of the pipeline up to the applicant’s premises needs to be borne by the applicants as fixed by the Board. That is to say that hundred percent of the amount should be received by the Board for laying pipeline to various newly cropped up housing colonies. As per the Act and the Rules, it is the applicants who have to pay the entire amount for laying the pipeline to their colonies for supplying the drinking water.”

We have heard learned counsel for the parties and perused the record, including the affidavit of Sri G.K.Rao, and are convinced that the order under challenge does not suffer from any infirmity. It is an undisputed position that the colony in which the appellants have built their houses has so far not complied with the condition embodied in Section 23 (2) of the Hyderabad Metropolitan Water Supply and Sewerage Act read with Rule 9 (3) of the Rules framed thereunder. Therefore, it is not possible to find any fault with the refusal of the Board to release water connection to the appellants’ premises.

However, we feel that ends of justice would be met by directing that as and when the members of Rock Town Colony deposit balance of 30% i.e. Rs.4,50,000/-, which they are required to deposit and the Municipal Corporation deposits its share, the authorities of the Board shall take steps to provide water connection to the appellants. The appellants may convince the members of Rock Town colony to fulfil their obligation of depositing of 30% of the total cost of water pipeline and also the authorities of Municipal Corporation of Hyderabad to deposit 70% of their share.

With the above observations, the appeal is disposed of.

At this stage, learned counsel for the appellants gave out that his clients had paid some amount directly to the Board. If that be so, they shall be entitled to seek refund of the amount after the members of the colony pay the balance of 30% of the amount.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD, J

April 27, 2006

Msv / svs